

Minutes
Municipal Courts Task Force
Tompkins County Legislature Chambers
December 16, 2015

Present: Ray Schlather, Jason Leifer, Scott Miller, Betty Poole, Mark Solomon, Glenn Galbreath,
Gwen Wilkinson, Liz Thomas
Excused: Mary Ann Sumner
Staff Joe Mareane, Marcia Lynch

Mr. Schlather called the meeting to order at 4:30 p.m. He characterized the meeting as a “taking stock” session; an interim discussion to get individual pulses as to some of the issues to see if something can be narrowed and to have a general discussion that will be helpful to the task force, public, and staff.

The agenda was reviewed and approved. There were no comments from the public. There was no report from the chair. Mr. Mareane noted in his report that efforts are being made to contact a member of OCA on Long Island to discuss district courts and the logistics of involving District Court representatives in the task force’s stakeholder presentation process. The minutes, as amended, was unanimously approved. Mr. Schlather noted for the record, and apologized for the fact that Judge Miller did attempt to attend the December 2 meeting, but was locked out of the building (as were others.) He also noted that data prepared by Ms. Hughes of the Assigned Counsel program had earlier been circulated to members of the task force. The data shows after hours arraignment activity for the period April 1-September 30, 2015. Judge Galbreath’s comments had also been circulated to members.

Mr. Schlather said he had listed four items (what additional stakeholder testimony is desired, major stakeholder themes to date; the narrowing of focus; and the nuts and bolts of further legal research and data collection should be assigned to the law students.)

With respect to additional stakeholders, court clerks are scheduled on January 13th. Bill Shaw will be submitting something regarding youth court. (Mr. Shaw was featured in an article in a NYS Bar Association for his work in youth court in the 1960’s in Tompkins County.) In addition, District Court reps will be invited to appear, as will County Clerk Maureen Reynolds. The Justice Courts judges have also asked to return to present their ideas. Mr. Schlather asked members whether there are other stakeholders who should be invited. Mr. Solomon suggested that defendants might be invited to speak. A discussion arose regarding how defendants would be identified. Mr. Solomon suggested Assigned Counsel might be able to identify individuals who would be prepared to speak. Ms. Hughes said she would ask attorneys about defendants whose cases are closed. Mr. Solomon said it would be odd not to inquire about individuals who have been through the system and who may have useful comments regarding the adequacies of the justice courts. Mr. Leifer said he would look through a list of prior

clients; Ms. Hughes said she would check with attorneys with larger caseloads. Mr. Mareane suggested OAR may be another source.

In response to Mr. Schlather's question about landlords association, Mr. Mareane said that there were only two letters that went out—one to the City and one to the County landlords association—and no responses were received.

Ms. Thomas noted that one session was to have been devoted for local elected officials. Mr. Schlather said letters had been sent to town supervisors and perhaps other local officials. There was no response to those letters. There was a discussion about the level of interest or awareness of the courts by local officials, given the separation between the courts and the ordinary operations of the municipality. Mr. Mareane offered to poll town and village officials about their interest in providing testimony to the task force. Mr. Schlather suggested that happen, and also requested data regarding the amount of fine money collected, court-by-court, and how much of that actually came back to the courts versus going to the State and County. Mr. Leifer said the State Comptroller has data regarding revenue, but would have to go to each municipality to see how much they spend on court operations. Mr. Schlather asked if the expenditure information will come through the reports from the courts. Mr. Mareane said he thought he could acquire revenue and expense information, but cannot secure volume information. Mr. Schlather said it is not important to know the information court-by-court, but is important to know how much was levied in fines through all the courts in the County, and the amount that came back to the County. Mr. Leifer accessed the information and found that in 2014, \$1,487,000 in fines were collected, with \$385,500 returned to towns and villages and \$110,650 to the County. Mr. Schlather asked whether a similar allocation formula exists for the City. Ms. Thomas said the only missing piece seems to be how much is spent, which is a part of every town and village budget. Mr. Leifer said the numbers can sometimes be hard to glean from the budget, particularly when trying to account for fringe benefit costs. Mr. Schlather suggested the interns could develop a revenue and expense report that shows the net cost of the local courts. Mr. Miller noted that the City Courts may be a much different budgeting system because they are a part of the State OCA system.

Mr. Schlather then opened the discussion, noting that Mr. Galbreath had provided the task force with his thoughts, including the positives and negatives of the various options. Mr. Schlather asked members to comment on where they believe the task force is headed, and where they are headed personally, with the proviso that this is being done solely to make sure that no stone is left unturned and that the group's time is not wasted on pursuits that have no support. He said the group has been talking about district courts vs. the status quo, lawyer-judges vs. non-lawyer judges, specialized parts, and other direction and that it would be useful to find out what the group thinks is realistic, what kind of research is necessary to identify implementation steps, etc.

Mr. Miller said he believes all agree that civil cases, small claims, any civil jurisdiction of the town and village courts have not been even a minor part of the discussion. All seems to be focused on criminal cases and due process rights of those coming before the court in criminal cases. Therefore, he said it should be clear that the focus is on criminal matters. He said that Mr. Galbreath's notes were helpful in their bluntness. On page 4 of Mr. Galbreath's memo, for example, he describes the idea of district

courts as politically toxic, and observation that Mr. Miller agrees with. He said district courts should not be a focus of the group when recommendations are developed because it is not appropriate or realistic. He suggested instead focusing on some kind of central arraignment facility for after hours arraignment, as is the case in Chenango County. He suggested visiting the Chenango facility to see how the arrangement works, including whether it cuts down on expenses by reducing time taken to track down a judge and attorney and the time a law enforcement officer is taken off patrol. The second area of suggested focus aligns with Judge Lippman's directive that all city and county courts have a DWI part. He said he cannot figure out why town and village courts are exempt. He noted comments that DWI cases are among the most complex that town and village courts hear.

Ms. Thomas said she has been reviewing her notes, and finds several recurring themes: the five courts operating on the same day; the uneven treatment between courts; the limited hours of some courts; the DWI complexity; the recommendation for some kind of consolidation; preventing bail for being used for punishment; adequate clerk hours; and centralized booking. What wasn't clear was whether attorney-versus non-attorney judges was an important distinction. She said the group is still missing the issue of cost. When centralizing some are all parts, will there be a difference in costs? Also, the group will need to know what the process will be to implement the recommendations proposed by the task force, including the involvement of local governments.

(Mr. Schlather welcomed Mr. Galbreath at this time.)

Mr. Schlather asked Ms. Thomas for her thoughts on items that should be pursued. She said a thorough cost analysis will be very important, as will be the process associated with any change.

Ms. Poole said the Magistrates met about a month ago and considered suggestions that had been developed by some of the members. The idea of a DWI court was presented. She agrees with Judge Miller regarding DWI court, noting the clerks would welcome it, and affirms it is a complex legal charge that keeps changing. There may be support among the magistrates for one central DWI court. The magistrates are also considering court scheduling. There is an awareness of the problems that occur on Mondays, and further discussions will occur to determine how to accommodate all involved. If some do not want to change from a Monday session, there is discussion of having pre-trials on a separate night. Additionally, there is discussion about having on-call judges, whereby judges in a geographical clustered area would have a rotating on-call system. If there are six judges in the area, each would be on call every 6th week. She said the DWI court and some of the other issues she pointed out are the main issues she'd like the group to focus on. The Magistrates Association has strong opinions on the lawyer/non-lawyer issue, and an attempt to change that system would result in many legislative challenges. She said the Association is also amenable to a central holding cell concept where individuals could be held while awaiting arraignment. The holding cell would be at the County jail. When asked by Mr. Schlather, Ms. Poole said that the twelve magistrates who attended the meeting seemed to be amenable to the approach to DWI cases. Mr. Schlather referred to Mr. Galbreath's suggestion that the Magistrates Association be on board with changes proposed by the task force in order to assist with the implementation. Ms. Poole said she circulated Mr. Galbreath's memo to all members of the Magistrates Association.

Judge Chernish said the points in Mr. Galbreath's memo were those raised at the Magistrates meeting. He said Mr. Galbreath's memo captured the sentiments of the association members.

Mr. Solomon asked to underscore a point made in Mr. Galbreath's memo on Page 1 (recognizing limitations on the ability of individual judges to bind themselves in advance without violating their judicial independence.) He said numerous of the matters cannot be put to a promise of the judges in advance of cases without risk of violating their independence. That does not mean that magistrates should not be brought on board as a part of the task force's effort to build consensus.

Mr. Solomon said it is now his view, after hearing compelling arguments from a number of presenters, that there is a real problem with non-lawyer judges hearing cases of legal complexity. However, he said that is a political problem, and its solution is a political solution. If there is real superiority in having lawyer –judges in justice courts, then it is the responsibility of concerned citizens and lawyers to make clear to the political parties and governing bodies why they should nominate lawyer judges rather than non-lawyer judges, and let the voters decide.

Mr. Leifer agreed that there is a political question about a lawyer versus non-lawyer judge, but that if a political question is going to be laid out, a district court option should also be laid out to the people. Not touching a question because some feel it is toxic is not the right course. He has been through a judicial election and found that results were based on the voter's familiarity with the candidates—a popularity contest—rather than legal credentials. He said contested judicial elections are rare (he recalls 10 during his time here.) With respect to cost, there is no question that having a state-funded district court would save towns and villages money. In Dryden, tens of thousands would be saved, resulting in either lower property taxes or larger investments in other services. He said there are ways to achieve savings within the law, such as two or more towns consolidating their courts. It is largely because of tradition that these kinds of changes don't happen. As a town board member, he knows the pressures of tax caps and uncontrollable mandated expenses, failing to implement cost saving changes is financially irresponsible and unfair to litigants. He referred to courts outside of Tompkins County where the hours of operation are so limited that it is not fair to litigants. If a municipality cannot fund a clerk to work 20 hours a week or more, then the town or village should get out of the business and find different ways of doing things. There are places where clerks work less than five hours a week. He said that if the district court question can't be moved, then the focus should be on which town and village courts can be merged. He said that if nothing else can happen, the suggestions made by Mr. Galbreath would make a great improvement, but should be looked at as a stopgap until a district court can be created.

Mr. Wilkinson said the range of testimony and scope of inquiry has gone beyond the group's strict mandate to find efficiencies through structural alignment. Regarding the formation of a district court, for the sake of thoroughness, she recommended following the suggestion of tasking an intern to identify statutory requirements and legislative measures to implement, and how much it would cost, and then determine if it results in greater efficiency. She said at the first meeting, there was an acknowledgement that significant money savings would not likely result from the review, so any money changes discussed will likely be small. She also said that there have been a number of conversations regarding lawyer vs. non-lawyer trained judges, with strongly articulated positions on both sides of the

issue. She suggested the task force look at how to strengthen the existing system, i.e., the dispensing of justice by the judges. She does not believe there is political will to require that all judges be lawyer-trained or that this would be an appropriate recommendation of the task force. She said we should focus on things already in place that are not being maximized. She noted Judge Rowley's comment that a low number of justice court decisions are appealed to County Court. Every justice court defendant convicted on a misdemeanor has the right to appeal to County court. If a mistake of law has been made, it will be pointed out and the case will be overturned, sent back, etc. She recommended local justices receive practical training in the management of a criminal case from start to finish, with emphasis on holding suppression hearings, getting comfortable with rules of evidence, burdens of proof, getting practical hands on training on decision writing to create a record (responding to frequent criticism of lack of a good record), and running a trial. While we are deciding whether this is a system we want to keep, we should see if we can make the system function in a way that dispenses justice in the manner required. In terms of practical efficiency, a central arraignment and holding facility would be huge generators of savings, both directly and indirectly (in terms of putting police back on patrol.) She closed by emphasizing we should focus on whether we can fix things that are the legitimate source of criticisms of the justice courts.

Mr. Galbreath referred to his memo, and offered to respond to any questions about its content. Mr. Miller asked Mr. Galbreath to explain comments about the criminal procedure law (Section 170.15-170.25) that enables defendants and DA to participate in a procedure involving criminal cases and moving them in front of a County court or Supreme Court judge. Mr. Galbreath said that if a defense attorney is unhappy with the qualifications or bias of a non-lawyer judge, he/she can move to have a County Court judge reassign the case to a lawyer-judge. He said he's never seen that happen in Tompkins County, so hadn't been aware of the procedure. He indicated if he were the defense attorney and felt that a judge wasn't capable of dealing with the complexity of the case, he would feel duty-bound to seek such a transfer. He also indicated that Mr. Schlather's office has had experience in such matters, and has found that the judge can reject the request for a reassignment. A remedy could be recognition that the reassignment is an important thing, if for no other reason than it would enhance the appearance of fairness. Since it goes to the County Court for assignment, the potential for judge shopping would be limited. Mr. Miller said that as a practicing attorney, he had made such a motion (to a judge who has passed away), and found the County Court judge unwilling to take on the additional burden of handling the case. He said that Section 170.25 does not seem to require the consent of the local town court. In the interest of justice, and good cause shown, the misdemeanor can be brought before a grand jury. Mr. Schlather said that Section 170.25 has been tested and been the subject of much litigation (North v. Russell said if non-lawyer-trained judges presiding over misdemeanor offenses are unconstitutional if there is no right of removal. In New York State, cases have held that to be constitutional, discretion must be exercised in favor of removal. Practically, if application made in a superior court, it does not require the local judge and should be removed to County Court to be prosecuted by indictment. As Mr. Miller has pointed out, that doesn't always happen. Mr. Miller said the County Court cannot necessarily handle every misdemeanor, but perhaps training for the assigned counsel panel attorneys on this Section would be helpful. Mr. Schlather said this could easily be more widely used without making a great deal of changes in the law.

Mr. Schlather said his sense is that the group probably has gone beyond the narrow parameters of its mandate, but that the mandate was somewhat generally drawn and that the exercise has given the community a chance to weigh in on a number of levels. If the end result is to improve the quality of justice in the County from what is already a high standard, we will be doing ourselves a great favor.

He said he sees the group's direction going in two trajectories. First is the question of a district court, part, or portion of a dedicated court. There seems to be a serious concern about the prosecution of misdemeanors, especially DWI's, in the local courts. The question is whether to go with a DWI part, a misdemeanor part, or a district court. The task force has yet to wrestle this issue to the ground. It is a serious issue, and requires a handle on the cost of the alternatives and the process of implementing them. The task force needs to know how much it will cost, and how to go about doing it. That task can be delegated to the interns to gather the raw data and review it. His sense is that the area of evictions is also something that should be considered to be included in that rubric, although not with the same gravitas as misdemeanors and DWIs.

The second area relates to the operational aspects of the local courts. Especially if the task force is planning to recommend a separate part for more serious criminal cases, the notion of having only lawyer-trained judges presiding over the local courts should be taken off the table. He would also suggest taking off the table the abolition of village courts (through merger with the town). Both of these are unnecessary and will lead in a red herring direction, especially if the group addresses the more serious criminal cases in some other way.

Mr. Schlather said within our existing system, which could change as the result of voluntary mergers of contiguous towns, several things ought to be addressed, including:

- A more uniform system for bail (recognizing that this cannot be imposed). He noted that NYC has come up with a bail review mechanism for all misdemeanor cases.
- Enactment Mr. Galbreath's recommendations regarding fines and use of confession of judgment instead of jail
- Something like a youth court, that would help to remove some of the youthful indiscretions and help young people avoid the stigma of a criminal conviction or stigma of having to go through the local criminal court even if it ends with an ACD.
- Centralized arraignment. He has some reluctance about a central holding facility, which could lead to unnecessary incarceration.
- Improving access to the local courts. There is a need to figure out how to make the courts more technologically accessible to allow paperwork to be filed, records accessed, and fines paid at any hour.

Mr. Schlather said there is a need to get a handle on the cost factor of the different options, and likes the idea of a visit to the Chenango County facility to see how that system works.

Judge Dewey Dawson asked to address the group. He said when the task force was formed, many magistrates looked at it as a positive thing, with the issues relating mostly to the economics of the system and a more level handling of cases from court-to-court. Many of the judges applaud the group's

work, but some believe that the task force has moved too far. The problems the courts now face relate in part to Judge Lippman's directive regarding counsel at first appearance. He said the press is focused on the negative aspects of the task force's work, specifically the lawyer/non-lawyer judge issue. He suggested concentrating on the kind of issues Mr. Schlather described that fixing or augmenting the current system.

With regarding to suggestions about modifying the court schedule, Mr. Schlather suggested the interns may develop a matrix of times the courts meet.

Mr. Schlather said he would work with Mr. Mareane to consolidate the ideas that were put forward tonight and that will provide direction to the interns.

All agreed that value had been added at tonight's meeting.

The meeting was adjourned at 6 p.m.